SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

ILLINOIS NATURAL GAS COMPANY,
Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM OF THE ILLINOIS COMMERCE COMMISSION.

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CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, ET AL.,

Appellees.

STATEMENT MAKING AGAINST THE JURISDICTION OF THIS COURT, TOGETHER WITH MOTION TO DISMISS OR AFFIRM.

The Illinois Commerce Commission, one of the appellees herein, by George F. Barrett, Attorney General of the State of Illinois, its attorney, pursuant to the provisions of Paragraph 3 of Rule 12 of this Court, respectfully submits the following statement disclosing matters and grounds making against the alleged jurisdiction of this Court as asserted by the appellant.

The Alleged Federal Questions Are Not Substantial and Have Been Repeatedly Passed Upon by This Court, Adversely to Appellant's Present Contentions.

The Panhandle Eastern Pipe Line Company, hereinafter called the Panhandle Company (*not* the appellant), gathers natural gas in Texas and Kansas and transmits it by its

high pressure mains through several States, including Illinois. In Illinois, these high pressure mains run in a generally east and west direction.

The Illinois Natural Gas Company, an Illinois corporation, appellant, owns and operates certain lateral transmission lines and incidental equipment, all located wholly within the State of Illinois, and sells gas to various public utilities, all of which are likewise located within said State. The appellant buys its gas from the Panhandle Company pursuant to a contract approved by the Illinois Commerce Commission.

This gas is delivered to the appellant at various points, all within the State of Illinois, where its lateral transmission lines intersect the high pressure (east to west) lines of the Panhandle Company, at which points the gas pressure is considerably reduced for economical transportation and delivery. The appellant, in turn, then delivers gas from its lateral transmission lines to various public utilities, all located in the State of Illinois, at which points the gas pressure is still further reduced. These local Illinois utilities then, in turn, distribute the gas to the ultimate consumers.

The appellant asks this Court to review and reverse a decision of the Supreme Court of the State of Illinois holding that the Illinois Commerce Commission has power to regulate appellant's business, all of which is located within the State of Illinois. Its contentions, in brief, are (1) that appellant's said business is such as to constitute interstate commerce, and (2) that the Congress of the United States, in enacting the Natural Gas Act, has given the Federal Power Commission exclusive jurisdiction over such matters.

Our contentions are, briefly, (1) that after the gas has once left the original high pressure interstate mains and has been delivered, under reduced pressure, to the appel-

lant's wholly intrastate transmission lines for delivery to wholly intrastate utilities at a still further reduced pressure, this constitutes, in effect, a breaking of the "original package" and marks the end of the "interstate commerce" character of the transactions; and (2) that the Natural Gas Act not only could not, but did not by its very terms, apply to such wholly intrastate matters. It is also our contention that these questions have been so well settled by the previous decisions of this Court that no substantial Federal questions, justifying the intervention of this Court, are involved.

I.

Interstate Commerce.

In the case of *Public Utilities Comm.* v. *Landon*, 249 U. S. 236, 63 L. Ed. 577, this Court, at page 245, said:

> "But in no proper sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises, constituted any part of interstate commerce. The companies received supplies which had moved in such commerce, and then disposed thereof at retail in due course of their own local business."

In the case of *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, this Court, at pages 308 and 309 said:

> "With the delivery of the gas to the distributing Companies, however, the interstate movement ends. * * * The business of supplying, on demand, local customers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting Company or by independent distributing Companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

In the case of *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 75 L. Ed. 117, the appellant, an Ohio gas company, bought its gas outside that State. At the State line the gas went into the company's high pressure mains from which it was then transmitted, at reduced pressure, into its other lines for delivery to numerous municipalities throughout the State of Ohio. The State of Ohio sought to collect an occupational tax from the appellant measured by such sales. In upholding the State's powers, this Court said, at pages 471 and 472, as follows:

> "But when the gas passes from the distribution lines into the supply mains, it is necessarily relieved of nearly all of the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while it was *while it was* in the high pressure interstate transmission lines, and it is divided into many thousand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumer's premises. So segregated the gas in such service lines and pipes remains in readiness or moves forward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail."

In the case of *Southern Natural Gas Corp.* v. *Alabama*, 301 U. S. 148, 81 L. Ed. 970, the State sought to impose an excise tax. The appellant brought in gas from another State under high pressure and then reduced the pressure when effecting its deliveries. This Court upheld the State tax. After referring with approval and quoting (at page 154) the language which we have quoted above from the *Missouri* v. *Kansas Gas Co.*, and the *East Ohio Gas Co.* v. *Tax Commission* cases, this Court held that such transac-

tions were intrastate in nature and properly taxed, and, at page 155, again said:

> "The treatment and division of the large compressed volume of gas is like the breaking of an original package, after a shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail."

We submit that the facts in the case at bar are clearly such as to bring this case within the rule, established by the above cited and other similar decisions of this Court, that the "interstate commerce" character of the distribution of the gas ceases when the gas is once withdrawn, under reduced pressure, from the high pressure interstate mains for distribution through purely intrastate transmission lines to purely intrastate public utilities at still further reduced pressures. The appellant's reference to such cases as *Peoples Natural Gas Co.* v. *Public Service Commission of Pennsylvania*, 270 U. S. 550, 70 L. Ed. 726, and *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. Ed. 1117, where there were no such reductions in pressure, are obviously not such as to give color to its contentions.

II.

The Natural Gas Act.

In view of the law and the facts as above set forth, we submit that the Congress of the United States could not, even if it saw fit to do so, pass legislation, divesting the State of Illinois of its power to regulate appellant's purely intrastate business.

We also contend that the Congress, by the very terms of the Natural Gas Act itself, expressly refrained from attempting to regulate such purely intrastate matters. Section 1 (b) of this said Act provides, in part, as follows:

> "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce,

> to the sale in interstate commerce of natural gas for resale for ultimate public consumption * * * but shall not apply to other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

We therefore submit that the Natural Gas Act could not, and by its very terms does not, constitute such an exercise of power as to exclude State regulation of the appellant's purely intrastate distribution of natural gas.

Conclusion and Motions.

The Illinois Commerce Commission, by George F. Barrett, Attorney General of the State of Illinois, its attorney, therefore submits that no substantial Federal questions, justifying the review of the said decision by this Honorable Court, are involved, and therefore respectfully prays that this Court decline to accept jurisdiction in this case.

In the alternative, it also moves that this Honorable Court dismiss the said appeal, or, in a further alternative, that this Honorable Court affirm the judgment of the Supreme Court of the State of Illinois.

Respectfully submitted,

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